

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

JOSEPH E. DESHERLIA,)
 Complainant)
 Vs.)
 LIBERTY POWER HOLDINGS LLC)
 Respondent,)
 Complaint as to incorrect billing in Grafton,)
 Illinois)

CHIEF CLERK'S OFFICE
 2012 AUG -8 A 10:59
 ILLINOIS COMMERCE
 COMMISSION

RESPONDENT'S REBUTTAL TESTIMONY

NOW COMES Respondent, Liberty Power Holdings LLC, at 1901 West Cypress Creek Road, Suite 600, Fort Lauderdale, FL 33309, and testifies as follows:

1. On March 19, 2010, Jan Desherlia, on behalf of Grafton Harbor, entered into a twelve (12) month fixed rate contract for electricity supply service with Liberty Power Holdings LLC (Liberty Power).
2. Contract No. 2010-006392, attached as Exhibit R1, authorizes the enrollment of the following accounts: 0124000320 and 7024002225.
3. Both enrolled accounts received electricity supply in accordance with the respective Customer Terms and Conditions since April 9, 2010 and are still supplied by Liberty Power.
4. Between January 2010 and October 2010, Liberty Power's third party billing vendor experienced a technical error which caused the failure to bill for two of the three daily meter readings provided by Ameren.
5. The specific period respective to the Grafton Harbor accounts was for the bill cycles occurring between 04/19/2010 and 08/16/2010, as reflected in the attached Exhibit R2.
6. The Grafton Harbor accounts were properly re-billed in accordance with Illinois Administrative Code 280.100, and the amount disputed by Grafton Harbor (\$11,046.51) accurately reflects amounts corresponding to the contract rate for actual energy consumed.
7. Liberty Power is contracted with Ameren as a participant in the Utility Consolidated Billing Purchase of Receivables program. The three referenced installment amounts were purchased as part of Liberty Power's receivables and are now owned by Ameren, not Liberty Power.

8. As a result of the Ameren POR program, Grafton Harbor does not owe Liberty Power any portion of the under billed balance, and Liberty Power believes that any dispute regarding the amounts in question should be directed to Ameren rather than Liberty Power.

This REBUTTAL is respectfully submitted. I hereby attest to the validity and accuracy of the statements made on behalf of Liberty Power Holdings LLC/Respondent.



Harris M. Rosen

Vice President and General Counsel

Liberty Power

1901 West Cypress Creek Road, Suite 600

Fort Lauderdale, FL 33309

954-598-7061

hrosen@libertypowercorp.com

CERTIFICATE OF SERVICE

I, Harris M. Rosen, as Vice President and General Counsel for LIBERTY POWER HOLDINGS LLC,
hereby certify that a copy of the Answer has been served upon the parties all parties involved.

Lee J. Plummer
100 S. State St.
Jerseyville, IL 62052

Elizabeth A. Rolando
Chief Clerk
527 East Capitol Ave.
Springfield, IL 62701

Jan Von Qualen
Administrative Law Judge
Illinois Commerce Commission
527 E. Capitol Ave.
Springfield, IL 62701

A handwritten signature in black ink, reading "Harris M. Rosen", is written over a horizontal line.

Harris M. Rosen
Vice President & General Counsel
Liberty Power
1901 W. Cypress Creek Rd
Suite 600
Fort Lauderdale, FL 33309
954-598-7061
hrosen@libertypowercorp.com



Liberty

ICC DOCKET NO. 12-0278

Joseph E. Desherlia v. Liberty Power Holdings LLC
EXHIBIT R1

2010-0022256

Contract Number: _____
Liberty Power Holdings LLC
Illinois Letter of Agency
Independence Plan
Contract Type:

1901 W Cypress Creek Road., Suite 600 • Fort Lauderdale, FL 33309 • 866-POWER-99 (1-866-769-3799)
Submit Contract Fax: 1-800-306-6264
www.libertypowercorp.com

Flow Start Month:	04/2010			<input type="checkbox"/> Tax Exempt <input type="checkbox"/> Reduced Tax Rate _____ %	
Customer Business Name:	GRAFTON HARBOR			Type of Business: <input type="checkbox"/> Non-Profit <input checked="" type="checkbox"/> Corporation <input type="checkbox"/> Limited Partnership <input type="checkbox"/> General Partnership <input type="checkbox"/> Limited Liability Company <input type="checkbox"/> Sole Proprietor	
Contact Name:	JAN DESHERLIA				
Title:	ACCOUNT MANAGER				
9-Digit Tax ID #:	383693823				
Billing Address:	245 EAST FAIRGROUND				
City:	JERSEYVILLE	State:	IL	Zip:	62052
Phone:	618-786-7678		Fax:	618-786-2759	
Email:	JAN@GTEC.COM				
Channel Partner Name:	RES	Sales Rep Name:	JOANN SORAIZ	Estimated Ann. Usage(kWh):	462,288

This Agreement applies to all utility account(s) listed below. (Complete Attachment "A" for additional accounts).

Utility	Utility Account Number:	Service Class	Rate/kWh	Term	Service Address
AMEREN ELECTRIC	2659035019	DS3	0.0753	12 Months	Address: 215 W WATER STREET City: JERSEYVILLE State:IL Zip: 62052
		Zone			
		CIPS			

Please read the following items:

- The business named above ("Customer") will pay Liberty Power Holdings LLC ("Liberty Power") a fixed rate (\$/kWh) as stated above for all electric energy used by the listed Account(s) for the Term indicated above, beginning on the next available meter read date occurring during the Flow Start Month above. The Liberty Power fixed rate does not include the Utility's distribution and delivery charges, applicable federal, state, and local taxes and charges.
- Customer acknowledges that the Utility will continue to deliver electricity purchased from Liberty Power, as required by the Illinois Commerce Commission.
- If Customer terminates this Agreement prior to the expiration of the Term indicated above, Customer will be liable for an Early Termination Fee as provided in the Termination of Service section of the Customer Terms and Conditions.
- Customer acknowledges that Liberty Power may choose not to accept this Letter of Agency or may require a deposit under one or more of the following conditions:
 - Information Customer or Customer's representative has provided is incomplete or inaccurate.
 - The stated energy charge was not authorized by Liberty Power or has significantly increased based on market conditions.
 - There is a prior Agreement between the parties for the stated term and location.
 - Enrollment of Customer's Account(s) is denied or significantly delayed by the Utility for any reason.
 - A review of Customer's credit profile indicates that Customer does not meet Liberty Power's credit requirements.
- The Customer acknowledges that switching electric supply service to Liberty Power (either from an independent supplier or the local Utility) could involve a charge by that current provider to the Customer.



Liberty

SUPPLEMENTAL TERMS AND CONDITIONS

Illinois – Independence Plan

Important: This is your service Agreement. Please keep for your records.

1901 W. Cypress Creek Rd., Suite 600
Ft. Lauderdale, FL 33309
1-866-POWER-99
Customer Care Fax: 1-877-772-2354
Email: info@libertypowercorp.com
www.libertypowercorp.com

Background: Liberty Power Holdings LLC ("Liberty Power") is a leading independent supplier of retail electricity that supplies competitively priced power to thousands of businesses and government entities in the United States. Our corporate offices are located at 1901 W. Cypress Creek Rd, Suite 600, Fort Lauderdale, FL 33309.

Plan Description: This Letter of Agency ("LOA") and the Plan Description included in your Liberty Power Welcome Kit contains important information concerning the Customer Account and is part of this Agreement. The "Customer" is the company identified and addressed in the Plan Description. As such the Plan Description should be kept, along with these Customer Terms and Conditions, for the Customer's records. The Plan Description includes account number(s), rate information, contract commencement date, contact telephone numbers, etc.

Billing: Liberty Power will bill the Customer monthly for electric generation service based upon electricity consumption as reported to Liberty Power by the Local Distribution Utility (Utility). Customer will be billed under one of the following billing options: (1) a line item on a consolidated Utility bill; or (2) as a direct bill from Liberty Power for only the energy supply, with the delivery charges being separately invoiced by the Utility. Customer will be sent a monthly invoice for electric service, due and payable by check or other acceptable method of payment by the stated due date on the invoice. If invoicing under a consolidated utility billing method, Liberty Power's energy charge does not include applicable federal, state, and local taxes and charges nor does it include current Utility charges associated with the delivery of Customer's electricity.

Price: Customer agrees to pay a fixed rate as agreed to and as stated in the Agreement. For purposes of this Agreement, Price means the energy price, including congestion, capacity, Network Transmission, ancillary services, losses, Auction Revenue Rights (ARR), Renewable Portfolio Standards (RPS) compliance costs, and any other miscellaneous charges (including, but not limited to ISO/RTO, or PUC fees). The Price does not include taxes, regulated charges from the utility including, but not limited to, utility delivery and distribution charges, customer account fees or other utility transition charges.

Payment Instructions for Direct Billed Accounts: Bills are due and payable by the stated due date on the invoice and will be subject to a finance charge for any late payment (at the lesser of 1.5% per month or the maximum rate permitted by applicable law) and collection fees, including reasonable attorneys' fees and court costs. A fee of \$30 per transaction will be assessed due to insufficient funds for any method of payment. All direct payments by Customer under this Agreement will be remitted to Liberty Power, 14154 Collections Center Drive, Chicago, IL 60693.

Term and Automatic Renewal: The initial Term of this Agreement is as listed in the Letter of Agency. Upon completion of the Term, this Agreement will renew automatically with a variable rate for an additional year term unless cancelled or renewed by Customer or Liberty Power, with 45-days written notice, or as otherwise applicable in this Agreement. Terms and Conditions applicable to the variable rate renewal period will be made available to Customer via mail or Web site approximately 90 days prior to the end of the initial term. Cancellation must be in writing to Liberty Power, 1901 W. Cypress Creek Rd., Suite 600, Ft. Lauderdale, FL 33309.

Credit/Security Deposit: Customer authorizes any person or credit-reporting agency to compile and furnish to Liberty Power any information about the Customer it may have or obtain in response to an inquiry from Liberty Power. Liberty Power may require a security deposit from Customer to initiate service, depending on Customer's credit or payment history. Such deposit requirement shall be communicated to Customer in writing and provide the timeframe in which the deposit must be received. The deposit amount shall not exceed the greater of either: 1/4 of the estimated annual billings; or the sum of the estimated billings for the next three (3) months. Deposits held for more than thirty (30) days will accrue interest from the date of receipt at the annual rate established by the Wall Street Journal Prime Rate.

Dispute Resolution: Liberty Power's Customer Care is available at 866-769-3799 to help with any questions or concerns regarding Customer accounts. Liberty Power's agents are committed to resourcefully finding resolution; however, if the dispute can not be settled within 120 days of receipt of written notification, either party may present the dispute to a venue of competent jurisdiction for review such as small claims court, mediation, arbitration, etc.

Disputes may also be filed with the Illinois Commerce Commission. They can be reached Monday through Friday at 1-800-524-0795 or 1-217-782-2024 outside the State of Illinois, or TTY at 1-800-858-9277. Complaints may be mailed to Illinois Commerce Commission, 527 East Capitol Ave., Springfield, IL 62701; or submitted via Web: www.icc.illinois.gov/consumer/complaint/.

Meter Equipment: Liberty Power does not take ownership of the Customer's current metering equipment. While the Customer has an effective electric energy sales Agreement with Liberty Power, Liberty Power has the right to install new metering equipment, at Liberty Power's expense.

Contract Number _____
SMIL-AM-ABC-SFRP-0210

Historical Usage and Credit Data: Customer consents to Liberty Power's request of historical usage and credit data from Utility and other agencies as appropriate in order to assist in estimating Customer usage requirements and creditworthiness for supply purposes. The usage data will be used for appropriate analysis, scheduling and purchase of electricity for the Customer.

Termination of Service: Liberty Power may terminate service to the Customer for a Customer Event of Default. The Customer will then receive electric energy service from Utility or will be given the opportunity to choose a different electric energy provider, according to procedures and options provided by the rules of the local Program. Customer will be responsible to pay for energy consumed before service was terminated. Customer may terminate this Agreement at any time during the initial term by giving Liberty Power at least forty-five (45) days written notice. Termination of this Agreement prior to the expiration of the initial term by the Customer will result in an Early Termination Fee (ETF).

Early Termination Fee is equal to the Remaining Contract Quantity times the greater of (i) Contract Price less Market Price at the time of Termination, or (ii) \$0.007/kWh.

Remaining Contract Quantity means the total estimated usage for the period remaining in the Term of this Agreement at the time of termination, based on the historical consumption for the Account(s). Market Price means the fixed rate at which Liberty Power would provide service for the remaining term for comparable Account(s) and usage as of the date this Agreement is terminated. The Early Termination Fee shall be waived if Customer provides satisfactory documentation to Liberty Power demonstrating that the business has been closed, moved or sold.

Disconnection of Service: Only the local Utility has the ability to disconnect your service. Failure to make full payment of the charges due hereunder will be grounds for disconnection in accordance with Illinois rules on the termination of service to non-residential customers.

Events of Default: An "Event of Default" shall mean: (a) for the Customer, (i) the failure to make, when due, any payment required under this Agreement or (ii) the failure to take electric supply when delivered under terms of this Agreement if such failure is not cured within ten (10) Business Days after giving written notice to the Notice Parties (as defined below); or (iii) the significant downgrading of Customer's credit rating since the Effective Date of this Agreement (b) in the case of Liberty Power, the failure to fulfill its obligations as set forth in this Agreement with regard to (i) contract price, (ii) contract term, (iii) contract volume and (iv) timely invoicing for power deliveries, in each case, if such failure is not cured within ten (10) Business Days after giving Notice as defined above; or (c) if either Party (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection of creditors, or have such petition filed against it and such petition is not withdrawn or dismissed for twenty (20) Business Days after such filing or (ii) be unable to pay its debts as they fall due and such inability is not cured within ten (10) Business Days after giving written Notice as defined herein.

Remedies for Customer Event of Default: In the event of a Customer Event of Default, Liberty Power has the right to terminate this Agreement in accordance with the Termination of Service provision. In lieu of termination, Liberty Power may, at its discretion: (i) require an additional deposit from Customer; (ii) request advance payment of an amount up to the average historical consumption for the last three (3) month period.

Collection of Past Due Charges: Liberty Power will pass through to Customer all charges related to the collection of past due invoices, including, but not limited to, collection agency fees, legal and court fees, and account termination fees.

Electric Emergencies and Power Quality: The Utility will continue to operate the electric transmission lines and to maintain responsibility for power outages and for power quality. Customer will hold Liberty Power harmless in the event of a loss of power caused by any entity other than Liberty Power. If Customer has an electrical emergency, power outage or reduction in power quality, Customer should contact the Utility at its emergency number.

Material Change: Liberty Power will provide the Customer with 45 calendar days advance written notice of any material change in the Terms of Service, either in its bill or in a separate mailing. The changes will become effective on the date stated in the notice unless Agreement is cancelled by the Customer. Customer may cancel Agreement no later than ten (10) calendar days before the effective date of the material change.

Notices: All Notices and similar correspondence will be in writing and delivered as specified in this Agreement to both Customer and Liberty Power, as applicable, by regular mail, courier, electronic mail, or facsimile. Notice will be effective upon either confirmation of receipt by the person to whom it is addressed or when delivery is confirmed by the carrier, whichever is earlier.

Agreement Assignment: Neither Party shall assign this Agreement without the prior written consent of the other party, provided, however, that Liberty Power may assign the accounts, revenues and proceeds arising from the Agreement to credit providers and Liberty Power may grant a lien upon its rights under this Agreement to credit providers (or to an agent thereof). Liberty Power may also assign its rights and obligations under this Agreement to certain backup service providers ("Service Providers") under contracts to perform services such as invoicing and power scheduling. Any such credit provider (or agent thereof) who has been assigned this Agreement may directly enforce Liberty Power's rights under this Agreement and may assign Liberty Power's rights under this Agreement upon foreclosure or other exercise of remedies by such credit providers (or agent thereof). Customer shall have the right

to assign this Agreement to an entity controlled by, controlling, or under common control with, Customer. Additionally, notice of default shall not be effective until notice is given as defined herein.

Publicity: Liberty Power shall be entitled to disclose and publicize the identity of Customer as a client of Liberty Power and display Customer's logo on its Web site.

Force Majeure: Force Majeure means an event or circumstance not reasonably within the control of or due to the negligence of Liberty Power, including without limitation acts of God, accidents, strikes, labor disputes, required maintenance work, inability to access the Utility system, nonperformance of the Utility, cuts to service lines, or changes in laws, rules, regulations, practices or procedures of any governmental authority or any other cause beyond the reasonable control of Liberty Power. Liberty Power will endeavor in a commercially reasonable manner to provide service, but cannot guarantee a continuous supply of electrical energy. Force Majeure events may result in interruptions in service to Customer. Please be aware that Liberty Power does not produce, transmit or distribute electricity provided to Customer under this Agreement and therefore will not be liable for any damages whatsoever for any such interruptions in service.

Limitations of Liability: Liability for damages not excused by reason of force majeure or otherwise shall be limited to direct actual damages. Neither party will be liable to the other for consequential, incidental, punitive, exemplary or indirect damages, including lost profits or penalties of any nature which are hereby waived, whether or not there was actual knowledge of such possible damages, or if such damages could have been reasonably foreseen. These limitations apply without regard to the cause or responsibility of any liability or damage.

Indemnity: Each party to this Agreement shall indemnify, defend and hold harmless the other from and against any claims arising from or out of any event, circumstance, act or incident first occurring or existing during the period when control and title to electric energy is vested in such party.

Representations and Warranties: The electricity supplied by Liberty Power under this Agreement will be purchased from a variety of sources. Liberty Power makes no representations or warranties other than those expressly set forth in this Agreement, Liberty Power expressly disclaims all other warranties, express or implied, including warranties of merchantability, conformity to models or samples, and fitness for a particular purpose.

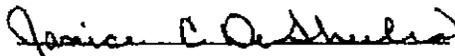
Governmental Authority: Liberty Power is not liable for any damages due to an interruption in service caused by acts of any governmental authority or changes in laws, rules, regulations, practices or procedures of any governmental authority.

Execution: Acceptance of the Customer's Agreement by Liberty Power will be signified by Liberty Power's mailing of a Welcome Kit which includes a Plan Description, a copy of the Terms and Conditions and confirmation of the rate and term of the Agreement. Signature by Liberty Power is not required to execute this Agreement.

Entire Agreement: The Voice Log or signed LOA, including the Customer Terms and Conditions and the Liberty Power Plan Description constitute the entire Agreement (Agreement) for the purchase of electric energy supply between the Customer and Liberty Power, relating to matters set forth in them. They take the place of any and all prior Agreements and understandings, oral or written, about Liberty Power supplying electric energy to the Customer. The Customer should keep this Agreement for his/her records.

By signing below, Customer acknowledges that he/she is the legal owner or authorized decision maker for the purchase of electric energy for the account(s) listed on this Agreement, Customer has received a copy of this Agreement, and has read and understands it. Customer agrees to be bound by the terms of this Agreement.

Customer Authorized Signature:



Printed Name:

JAN DESHERLIA

Date:

03/19/2010

Contract Number: _____
SMIL-AM-ABC-SFRP-0210

Page 4 of 4



Liberty POWER

**ATTACHMENT A
Service Class and Zone**

1501 W. Cypress Creek Rd., Suite 500
 Ft. Lauderdale, FL 33309
 1-866-POWER-99
 Fax: 1-877-772-2354
 Email: info@libertypowercorp.com
 www.libertypowercorp.com

Customer Business Name: **GRAFTON HADQR**

Contact Name: **JAN DESHERLITA**

Service Account Number/Service Address	Service Class	Zone	Rate/kWh	Term	Check One
0124000320 Address: 72A WILET COUNTRY ROAD City: JERSEYVILLE State: IL Zip: 62052 Billing Address Address: 345 EAST FAIRGROUNDS City: JERSEYVILLE State: IL Zip: 62052	DS2	CIPS	0.0753	12	Billing Address same as Service Address(s) <input type="checkbox"/> Billing Address as listed Contract Page: <input checked="" type="checkbox"/>
7034008245 Address: 1600 SOUTH STATE STREET SUITE D City: JERSEYVILLE State: IL Zip: 62052 Billing Address Address: 345 EAST FAIRGROUND City: JERSEYVILLE State: IL Zip: 62052	DS2	CIPS	0.0753	12	Billing Address same as Service Address(s) <input type="checkbox"/> Billing Address as listed Contract Page: <input checked="" type="checkbox"/>
Address: City: State: Zip: Billing Address Address: City: State: Zip:					Billing Address same as Service Address(s) <input type="checkbox"/> Billing Address as listed Contract Page: <input type="checkbox"/>
Address: City: State: Zip: Billing Address Address: City: State: Zip:					Billing Address same as Service Address(s) <input type="checkbox"/> Billing Address as listed Contract Page: <input type="checkbox"/>
Address: City: State: Zip: Billing Address Address: City: State: Zip:					Billing Address same as Service Address(s) <input type="checkbox"/> Billing Address as listed Contract Page: <input type="checkbox"/>
Address: City: State: Zip: Billing Address Address: City: State: Zip:					Billing Address same as Service Address(s) <input type="checkbox"/> Billing Address as listed Contract Page: <input type="checkbox"/>

Customer Authorized Signature: *Jan Desherlita*

Title: ACCOUNT MANAGER

Contract Number: 88

Customer Name	Invoice ID	Bill ID	Customer	Utility	Service/Com	ServiceTo	ProcessDate	Sum of numbers 21 that should have been invoiced	Sum that was actually invoiced (per invoice)	Amount that was actually invoiced	kWh Difference	Invoiced Energy Rate	Total Amount Under Charge	Installation / Payment #1	Installation / Payment #2	Installments / Payment #3
GRAFTON HARBOR	2946769	26590350154995270320	AMEREN	AMEREN	#####	#####	2010-08-24 11:10:55.833	65,400	23,016.00	1,733.10	42,600.00	0.0753	\$5,207.78	\$1,069.26	\$1,069.26	\$1,069.26
GRAFTON HARBOR	2843441	26590350154995270320	AMEREN	AMEREN	#####	#####	2010-07-21 04:24:16.760	49,200	18,496.00	1,392.75	30,806.00	0.0753	\$2,326.77	\$775.59	\$775.59	\$775.59
GRAFTON HARBOR	2016537	26590350154995270320	AMEREN	AMEREN	#####	#####	2010-09-17 04:28:27.077	48,300	18,531.00	1,395.38	30,008.00	0.0753	\$2,259.80	\$753.00	\$753.00	\$753.00
GRAFTON HARBOR	2759658	26590350154995270320	AMEREN	AMEREN	#####	#####	2010-06-19 04:29:46.770	41,200	14,898.00	1,121.82	26,500.00	0.0753	\$2,146.05	\$715.35	\$715.35	\$715.35
GRAFTON HARBOR	2682112	26590350154995270320	AMEREN	AMEREN	#####	#####	2010-05-20 08:28:13.947	24,300	9,822.00	739.60	14,700.00	0.0753	\$1,106.81	\$368.97	\$368.97	\$368.97

\$11,046.31